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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/800,093

03/12/2004

William G.F. Kelly

PPC-5053-USANP

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7590

07/06/2006

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EXAMINER

HAND, MELANIE JO

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 07/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/800,093	Applicant(s) KELLY, WILLIAM G.F.	
	Examiner Melanie J. Hand	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/18/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement (IDS) submitted on November 18, 2005 was filed after the mailing date of the Application on March 12, 2004. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-27 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 and 6-28 of copending Application No. 11/184,523. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to a sanitary napkin having a cover layer, and the body-facing cover layer claimed in the instant application is an obvious variant of a cover layer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-27 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a sanitary napkin having a body-facing cover layer and absorbent system, does not reasonably provide enablement for a sanitary napkin having a particular masking value according to the method set forth in the specification. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make or use the invention commensurate in scope with these claims. Claims merely setting forth physical characteristics desired in article, and not setting forth specific compositions which would meet such characteristics, are invalid since they cover any conceivable combination of ingredients either presently existing or which might be discovered in future and which would impart desired characteristics; thus, expression "a liquefiable substance having a liquefaction temperature from about 40°C. to about 300°C. and being compatible with the ingredients in the powdered detergent composition" is too broad and indefinite since it purports to cover everything which will perform the desired functions regardless of its composition, and, in effect, recites compounds by what it is desired that they do rather than what they are; expression also is too broad since it appears to read upon materials that could not possibly be used to accomplish purposes intended.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al (U.S. Patent Application Publication No. 2004/0253894).

With respect to **Claims 1,6**: Fell teaches absorbent article 10 comprising body side liner 12 (body facing cover layer) and absorbent core 16 adjacent liner 12. Core 16 has an intake of 15 seconds (Fig. 38-Control) and a rewet for said control core of between 0.37 - 0.54 g as determined by a test method that is substantially identical to that set forth in the disclosure. Fell does not teach a rewet that satisfies the limitation of claim 1. However applicant does not establish sufficient criticality for a rewet of less than 0.05 grams, therefore such a rewet amount is considered herein to be an optimization. It would be obvious to one of ordinary skill in the art

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to modify the core 16 taught by Fell so as to effect a rewet according to the method taught by Fell that is less than 0.05 grams, as less rewet is widely understood in the art to be a more desirable result and indicates improved absorbent material capacity and fluid handling characteristics.

With respect to claim 1, Fell does not teach a particular masking value but does teach forming the body-side liner with an amount of titanium dioxide pigment of 6 wt% to give said liner a clean, whiter appearance (i.e. yields a percentage of pixels on the surface of said body-side liner that have a value of 255 for "white" according to the test method set forth by applicant). Titanium dioxide is also known in the art as a means for masking stains as it renders layers located behind a treated layer substantially invisible through said treated layer. Since Fell teaches only a 6 wt% amount of titanium dioxide, Fell teaches that the article will have a small enough percentage of purely white pixels to mathematically yield a masking value of less than 115,000 according to the masking value computation method set forth in the instant application.

With respect to **Claims 2-4**: Fell implicitly teaches a masking value less than 115,000, but does not teach a specific masking value (as the term is understood by the disclosure) in that range. However, applicant has not established sufficient criticality for the masking values set forth in claims 2-4, therefore said values are considered herein to be optimizations. It would be obvious to one of ordinary skill in the art to increase the amount of titanium dioxide added to the liner 12 so as to achieve the masking values set forth in claims 2-4, as increased titanium dioxide leads to a cleaner, whiter appearance as taught by Fell, which will necessarily effect lower masking values.

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With respect to **Claims 7,8**: Fell teaches that absorbent core 16 is comprised of a first group of fibers 28 comprised of cellulosic pulp fibers (claim 8) and superabsorbent material 32 (claim 7).

With respect to **Claims 9, 17-19,23**: Fell teaches that core 16 is comprised of first absorbent layer 26 and second absorbent layer 24 comprised of an airlaid tissue laminate comprising a bottom layer of pulp, a middle layer of pulp and superabsorbent polymer and a top layer containing at least some pulp (taught by Fell directly and with reference to U.S. Patent No. 4,604,313) and having a basis weight in the range of 120-225 gsm.

With respect to **Claims 10-12, 22**: Fell teaches that the density of absorbent layer 24 is in the range of 0.06 – 0.4 g/cc.

With respect to **Claim 13**: Fell teaches by reference to '313 a layer 24 having a middle layer that is further comprised of first middle layer adjacent said bottom layer of layer 24 and a second middle layer adjacent said top layer of layer 24.

With respect to **Claims 14-16,25**: Fell teaches that superabsorbent 32 is present in an amount between 0-85 wt%.

With respect to **Claims 24,26,27**: Fell teaches by reference to '313 that the thickness of layer 24 is 0.20 inches, or 5.8 mm, which does not fall in the range set forth by applicant, however applicant has not established sufficient criticality for the thickness range set forth, therefore such a range of values is considered an optimization of the thickness of layer 24. It would be obvious to one of ordinary skill in the art to modify the thickness of layer 24 so as to fall within the range

set forth in claim 17, as ultra-thin absorbent products having thicknesses in this range are known in the art and are desirable as they are equally or more absorbent than thicker articles while also being more discreet.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

MJH

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

